

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

House Republican Campaign
Committee,

AMENDED
ORDER OF DISMISSAL

Complainant,
vs.

Minnesota DFL State Committee,

Respondent.

The above matter came on for an evidentiary hearing on February 5, 2009, before a panel of three Administrative Law Judges: Bruce H. Johnson (Presiding Judge), Kathleen D. Sheehy, and Patricia J. Milun. The hearing was held pursuant to Minn. Stat. § 211B.35 to consider a campaign complaint filed by the House Republican Campaign Committee (HRCC) against the Minnesota DFL State Committee on October 31, 2008. The hearing record was held open for submission of stipulated testimony and closing briefs.

David Asp and Matthew Salzwedel, Attorneys at Law, Lockridge, Grindal, Nauen, P.L.L.P., 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401, appeared on behalf of the House Republican Campaign Committee (HRCC or Complainant). Alan Weinblatt and Jane Prince, Attorneys at Law, Weinblatt & Gaylord, PLC, 111 East Kellogg Boulevard, Suite 300, St. Paul, MN 55101, appeared on behalf of the Minnesota DFL State Committee (DFL or Respondent).

On February 25, 2009, the parties submitted a Stipulation of Settlement and Request for Dismissal. Pursuant to the terms of the stipulation, the HRCC and the House DFL Caucus have agreed in pertinent part that:

- (1) Any political advertisement or campaign material stating that a candidate is "under investigation" violates Minn. Stat. § 211B.06 if the advertisement or material is based on the fact that a complaint has been filed with the Office of Administrative Hearings or on the fact that the Office of Administrative Hearings has conducted proceedings until an order is entered finding probable cause that a violation has occurred.
- (2) In the future, neither the HRCC or the House DFL Caucus will use the term "investigation" in any political advertisement or campaign material to refer to the OAH process for reviewing complaints filed under the Minnesota Fair Campaign Practices Act unless the OAH has made a finding of probable cause under Minn. Stat. § 211B.34, subd. 2.

Based upon the parties' Stipulation of Settlement and Request for Dismissal,

IT IS HEREBY ORDERED:

1. That the Complaint filed by the HRCC in the above matter is DISMISSED WITH PREJUDICE pursuant to the terms of the parties' settlement agreement.
2. This Order constitutes the final decision in this case and is effective immediately.

Dated: March 20, 2009

/s/ Bruce H. Johnson
BRUCE H. JOHNSON
Presiding Administrative Law Judge

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

/s/ Patricia J. Milun
PATRICIA J. MILUN
Administrative Law Judge

MEMORANDUM

On March 9, 2009, the panel issued an Order dismissing this campaign complaint pursuant to the terms of the parties' settlement agreement. The panel included in the Order of Dismissal a paragraph stating the following:

That notwithstanding the agreement of the parties, the OAH does not possess investigative powers and does not conduct an "investigation" at any stage of the campaign complaint process. Instead, the burden rests

solely with the Complainant to investigate and prove up any alleged violation of the Fair Campaign Practices Act.¹

By letter dated March 12, 2009, counsel for the Respondent objected to this paragraph as being “wholly gratuitous” and purporting “to tell future candidates and committees what they can and cannot say in political campaign material.”

The paragraph at issue was included in the Order to advise the parties that while the parties are bound by the terms of their stipulation, the Office of Administrative Hearings is not, and the OAH does not necessarily concur with the suggestion in the stipulated terms that the OAH may be said to “investigate” complaints at the probable cause stage of the campaign complaint process or thereafter.

On reconsideration, the panel believes the identified paragraph would have been better placed in a Memorandum attached to the Order, rather than in the Order itself. Accordingly, this Amended Dismissal Order reflects that change.

B.H.J., K.D.S., P.J.M.

¹ Minn. Stat. § 211B.32 to 211B.37.